

907 KAR 10:820. Disproportionate share hospital distributions.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(f), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.639, 205.640, 216.380(12), 42 C.F.R. Parts 412, 413, 447.252, 447.253, 42 U.S.C. 1395ww(d)(5)(F), 1396a, 1396r-4

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639 and 205.640.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.

(3) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Disproportionate share hospital" or "DSH" means an in-state hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 U.S.C. 1396r-4(d).

(6) "DRG" or "diagnosis related group" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(7) "DRG-reimbursed hospital" means an in-state hospital reimbursed via a DRG methodology pursuant to 907 KAR 10:825.

(8) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(9) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:

(a) To an individual who is:

1. Determined to be indigent in accordance with KRS 205.640; and

2. Not a Medicaid recipient; and

(b) For which an individual shall not be billed by the hospital.

(10) "Indigent care eligibility criteria" means the criteria as specified in Section 9 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.

(11) "Inpatient equivalency" means the equivalency that is:

(a) Determined by taking a hospital's aggregate Medicaid DRG reimbursement, dividing it by the aggregate Medicaid DRG allowed days, and determining a per diem amount paid; and

(b) Based on the Medicaid schedule contained in the most recently finalized Medicare cost report.

(12) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(13) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(14) "Private psychiatric hospital" is defined by KRS 205.639(2).

(15) "Pro rata basis" means a basis for allocating an amount proportionately to all hospitals within a hospital category.

(16) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(17) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(18) "State mental hospital" is defined by KRS 205.639(3).

(19) "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).

(20) "University hospital" is defined by KRS 205.639(4).

Section 2. Disproportionate Share Hospital Distribution General Provisions. A DSH distribution shall:

(1) Be made to a qualified hospital;

(2) Be based upon available funds in accordance with KRS 205.640;

(3) Be based upon a hospital's proportion of inpatient and outpatient indigent care from the preceding state fiscal year;

(4) Be a prospective amount. For example, a DSH distribution made to a hospital in October 2007 shall cover the state fiscal year beginning July 1, 2007 and ending June 30, 2008;

(5) Not be subject to settlement or revision based on a change in utilization during the year to which it applies; and

(6) Be made on an annual basis.

Section 3. Disproportionate Share Hospital Distribution to a DRG-Reimbursed Acute Care Hospital. The department shall determine a DSH distribution to a DRG-reimbursed acute care hospital by:

(1) Determining a hospital's average reimbursement per discharge;

(2) Dividing the hospital's average reimbursement per discharge by Medicaid days per discharge;

(3) Multiplying the amount established in subsection (2) of this section by the hospital's total number of inpatient indigent care days for the most recently completed state fiscal year to establish the hospital's inpatient indigent care cost;

(4) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091;

(5) Combining the inpatient indigent care cost established in subsection (3) of this section with the outpatient indigent care cost established in subsection (4) of this section to establish a hospital's indigent care cost total; and

(6) Comparing the total indigent care cost for each DRG-reimbursed hospital to the indigent care costs of all hospitals receiving DSH distributions under the acute care pool pursuant to KRS 205.640(3)(d) to establish a DSH distribution on a pro rata basis.

Section 4. Disproportionate Share Hospital Distribution to a Critical Access Hospital, Rehabilitation Hospital or Long Term Acute Care Hospital. The department shall determine a DSH distribution to a critical access hospital, rehabilitation hospital, or long term acute care hospital:

(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:

(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091;

(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis; and

(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:

(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost;

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091;

(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis.

Section 5. Disproportionate Share Hospital Distribution to a Private Psychiatric Hospital. The department shall determine a DSH distribution to a private psychiatric hospital:

(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:

(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091 or by establishing an inpatient equivalency;

(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis; and

(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:

(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost; and

(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Depart-

ment of Labor in accordance with 803 KAR 25:091 or by establishing an inpatient equivalency;

(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and

(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis.

Section 6. Disproportionate Share Hospital Distribution to a State Mental Hospital. The Department shall determine a DSH distribution to a state mental hospital by:

(1) Comparing each state mental hospital's costs of services provided to individuals meeting the indigent eligibility criteria established in Section 9 of this administrative regulation, minus any payment made by or on behalf of the individual to the hospital; and

(2) Using the DSH funding allocated to state mental hospitals to establish a state mental hospital's DSH distribution on a pro rata basis.

Section 7. Disproportionate Share Hospital Distribution to a University Hospital. The department's DSH distribution to a university hospital shall:

(1) Be based on the hospital's historical proportion of the costs of services to Medicaid recipients, minus reimbursement paid via 907 KAR 10:825 or 907 KAR 10:815, plus the costs of services to indigent and uninsured patients minus any distributions made on behalf of indigent and uninsured patients;

(2) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for distribution under this subsection; and

(3) Comply with KRS 205.640(3)(a)2.

Section 8. Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, DSH-001, Application for Disproportionate Share Hospital (DSH) Program, and the Disproportionate Share Hospital (DSH) Program Manual, to assess a patient's financial situation to determine if:

(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or

(b) A patient meets the indigent care eligibility criteria.

(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance, Medicaid or KCHIP, within thirty (30) days of completing the DSH-001, Application for Disproportionate Share Hospital Program (DSH), at the hospital.

Section 9. Indigent Care Eligibility Criteria. (1) A hospital shall receive disproportionate share hospital funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of this administrative regulation if the following apply:

(a) The patient is a resident of Kentucky;

(b) The patient is not eligible for Medicaid or KCHIP;

(c) The patient is not covered by a third-party payor;

(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;

(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:

1. The patient;

2. The patient's spouse;
 3. The minor's parent or parents living in the home; and
 4. Any minor living in the home;
- (f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;
- (g) The annual countable resources of a family unit shall not exceed:
1. \$2,000 for an individual;
 2. \$4,000 for a family unit size of two (2); and
 3. Fifty (50) dollars for each additional family unit member;
- (h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and
- (i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.
- (2) Except as provided in subsection (3) of this section, total annual gross income shall be the lessor of:
- (a) Income received during the twelve (12) months preceding the month of receiving a service; or
- (b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4).
- (3) A work expense for a self-employed patient shall be deducted from gross income if:
- (a) The work expense is directly related to producing a good or service; and
 - (b) Without it the good or service could not be produced.
- (4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.
- (5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

Section 10. Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 9 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:

- (a) Review evidence regarding the indigent care eligibility determination;
- (b) Cross-examine witnesses regarding the indigent care eligibility determination;
- (c) Present evidence regarding the indigent care eligibility determination; and
- (d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:

- (a) The patient or responsible party who requested the fair hearing; and
- (b) The department.

(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 11. Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall

collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 12. Merged Facility. If two (2) separate entities merge into one (1) organization and one (1) of the merging entities has disproportionate status and the other does not, the department shall retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid.

Section 13. Incorporation by Reference. (1) The following material is incorporate by reference:

(a) "The Disproportionate Share Hospital (DSH) Program Manual", January 2008 edition; and

(b) The "DSH-001, Application for Disproportionate Share Hospital (DSH) Program", March 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (34 Ky.R. 1610; Am. 2195; 2409; eff. 6-6-2008; Recodified from 907 KAR 1:820; eff. 5-3-2011.)